

34715, LLC v NYC TH Share Holder LLC

2025 NY Slip Op 33802(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 652977/2025

Judge: Paul A. Goetz

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

34715, LLC, JEFFREY M. KRAUSS,
Plaintiffs,
- v -

NYC TH SHARE HOLDER LLC,88TH TOWNHOUSE FEE
LLC, NORTHGATE REAL ESTATE GROUP, LLC,88
STREET SERVICING LLC,88TH STREET 15 SHARE
HOLDER LLC, ERIC GOODMAN
Defendants.

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and a large text box containing 'DECISION + ORDER ON MOTION'.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiffs 34715 LLC (34715) and Jeffrey M. Krauss move to enjoin and restrain
defendants NYC TH Share Holder LLC (NYCTH), 88th Townhouse Fee LLC (Townhouse Fee),
Northgate Real Estate Group LLC (Northgate), 88 Street Servicing LLC (88 Street), and 15
Share Holder LLC (15 Share Holder)1 from selling shares allocated to real property located at 7
East 88th Street, New York, NY 10128 (the building) and 12 Woodin Road, Kent CT 06757 (the
Connecticut property).

1 The motion was withdrawn as against defendant Eric Goodman (NYSCEF Doc No 93).

BACKGROUND

Krauss is the sole member and manager of 34715 and is the sole shareholder and president of the 7 East 88th Street Corp. (the cooperative), the owner of the building (NYSCEF Doc No 5 ¶¶ 3-5).

In or around 1984, the cooperative issued shares appurtenant to units 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, half of the basement, the backyard, and the roof (the cooperative shares) (*id.* ¶ 4). Over the years, 34715 purchased the shares appurtenant to units 1A, 1B, 2A, 2B, 3A, and 5A, and half of the basement and backyard; and Krauss purchased the shares appurtenant to units 3B, 4A, 4B, and 5B, and the roof (*id.* ¶¶ 6, 10). In 2003, Krauss consolidated his units and the roof into a triplex apartment (the triplex), where Krauss and his wife live (*id.* ¶¶ 10-11). Also in 2003, Krauss purchased the Connecticut property (*id.* ¶ 13).

In 2008, the cooperative “extended a collateral mortgage,” which was later assigned to 88 Street, “secured by the Building in consideration of a loan of \$6 [million] to 34715” (*id.* ¶¶ 17-19). In 2020, 88 Street loaned \$2.18 million to 34715, “secured by [some of] 34715’s shares in the Cooperative, and guaranteed by the Cooperative” (*id.* ¶ 20). In 2021, the cooperative extended another collateral mortgage to 88 Street in the amount of \$1.23 million “secured [some of] 34715’s shares in the Cooperative, the proprietary leases issued by the Cooperative in connection with those shares, and related sub-leases” (*id.* ¶ 22).

In December of 2023, 34715 and 88 Street agreed to consolidate all the foregoing mortgages, and an additional mortgage of \$2.85 million, into a single lien in the amount of \$12.1 million (the consolidated loan) (*id.* ¶¶ 25-27). The parties entered into a refinancing agreement which required 34715 to prepay the first eight months’ interest on the consolidated loan, and Krauss “consented to a lien on the Connecticut Property” in favor of 88 Street (*id.* ¶ 24).

Additionally, Krauss “entered into three agreements . . . pledging 100% of [his] membership interests in 34715 and NYC157 [LLC (NYC157)] and 34715’s Cooperative shares appurtenant to Units 1A, 1B, 2A, 3A, and 5A” to 88 Street (the pledge agreement) (*id.* ¶ 29). Also, “a statutory form quitclaim deed, dated December 14, 2023, purport[ed] to transfer ownership of the Connecticut Property from Krauss to NYC157” (*id.* ¶ 14).

On June 18, 2024, in light of a forbearance agreement entered into by 34715 and 88 Street, the pledge agreement was amended to add 34715’s shares appurtenant to units 4A, 4B, and 5B, and the roof (the disputed shares) as collateral on the consolidated loan (the amended pledge agreement) (NYCSEF Doc No 78 ¶ 53). On the same date, “Krauss, 34715, the Cooperative, and NYC157 entered into an Assignment-In-Lieu Of Foreclosure Agreement . . . which purported to transfer [possession and the shares appurtenant to] Unit 3B [from Krauss] to 88 Street” (assignment-in-lieu agreement) (*id.* ¶ 51).

On July 3, 2024, the consolidated loan was assigned from 88 Street to NYCTH (NYSCEF Doc No 5 ¶ 32).

“In September 2024, [Krauss] received a letter from NYCTH demanding that [he] make monthly payments on the [consolidated] mortgage” (*id.* ¶ 34 [Krauss alleges this conflicts with “the explicit promise made by Eric Goodman that monthly payments were forborne through 2024” in consideration of the lien placed on the Connecticut Property]). Krauss continued to receive letters “stating that [he] was in default on the refinanced 2023 mortgage for failing to make interest payments after the eighth month of the one-year term” (*id.* ¶ 37).

On February 27, 2025, 15 Share Holder recorded a “purport[ed] . . . transfer of Unit 3B” from Krauss to 15 Share Holder (*id.* ¶¶ 38-39 [Krauss alleges that this is a “fraudulent transfer,”

as he is “not familiar with 15 Share Holder and [] did not knowingly transfer Unit 3B to that or any other entity on or about February 2025”)).

Plaintiffs allege that “[o]n or after March 21, 2025, a process server threw a notice of sale and notification of disposition [] into the lobby of the Building, which was discovered by one of the sub-tenants” (*id.* ¶ 43). The notice stated that NYCTH would hold an online auction on May 20, 2025 for the sale of 34715’s shares in units 1A, 1B, 2A, 3A, 4A, 4B, 5A, and 5B, and the roof; each of their respective proprietary leases; and Krauss’ 100% ownership interest in 34715 (*id.*).

On May 19, 2025, the court issued a temporary restraining order staying the auction scheduled for the following day (NYSCEF Doc No 18) pending a determination on the motion (NYSCEF Doc Nos 76, 92, 96 [extending the TRO]).

DISCUSSION

Notice of Sale and Disposition

Plaintiffs first argue that the notice of sale and disposition is facially deficient because it fails to (i) notify plaintiffs that they are entitled to an accounting of the unpaid indebtedness pursuant to UCC § 9-613(a)(4); and (ii) provide an additional 90-day notice of disposition pursuant to UCC § 9-611(f)(1) which complies with the formatting and content requirements of UCC § 9-611(f)(1-a) (NYSCEF Doc No 16). Defendants argue that plaintiffs “waived any right to receive notices pursuant to the express terms of [Section 8 of] the Amended Pledge”; plaintiffs mischaracterize the UCC’s requirements; and the notice of sale was sufficient as a matter of law because it provided and/or defined the pledgor, collateral, method of disposition, and amount of indebtedness (NYSCEF Doc No 60). They assert that in any event, the sale can be re-noticed to cure any deficiencies (*id.*).

The amended pledge agreement provides that “if the sale be a private sale, five (5) days’ written notice shall be given to the Pledgor of the date, time and place of any sale and the terms of the sale, which notice Pledgor agrees is reasonable, all other demands, advertisements and notices being hereby waived” (NYSCEF Doc No 44 § 8). The sale at issue was public, and therefore plaintiffs did not waive their rights to receive any notices.

Plaintiffs are correct that they are entitled to service of a notice of sale “stat[ing] that the debtor is entitled to an accounting of the unpaid indebtedness and [] the charge, if any, for an accounting” pursuant to UCC § 9-613(a)(4) (*Arthur v Carver Fed. Sav. Bank*, 150 AD3d 447, 448 [1st Dept 2017]).

Plaintiffs assert that because the “secured party seeks to dispose of collateral comprising shares in a residential cooperative apartment” (NYSCEF Doc No 16), plaintiffs should have received an additional pre-disposition notice pursuant to UCC § 9-611(f)(1). Defendants argue that this section is inapplicable because plaintiffs represented that none of the units were being used by individuals as a primary residence (NYSCEF Doc No 60). UCC § 9-611(f)(1) applies to situations in which “a secured party[’s] collateral consists of a residential cooperative interest *used by the debtor*,” i.e., not only where the cooperative unit is used as the debtor’s primary residence. However, defendants are correct that the section is nevertheless inapplicable because it “only pertains to loans used to finance or refinance the *acquisition* of residential real property,” and plaintiffs acquired the property and shares years prior to entering the loan agreements (*id.* [emphasis altered]).

Accordingly, the notice of sale was deficient only in that it failed to comply with UCC § 9-613(a)(4); however, as defendants note, this deficiency can be cured by re-noticing the sale.

Commercially Reasonable

The UCC requires that “[e]very aspect of a disposition of collateral including the method, manner, time, place, and other terms, [] be commercially reasonable” (UCC § 9-610[b]). “If it is established that a secured party is not proceeding” in a commercially reasonable manner, “a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions” (UCC § 9-625[a]).

i. Description of Assets (Sub-Tenancies)

Plaintiffs argue that the sale is not commercially reasonable because defendants “failed to accurately describe the assets of which it is attempting to dispose, including the existence of sub-tenants” (NYSCEF Doc No 16). Defendants oppose on the grounds that “Plaintiffs have failed to produce any evidence, documentary or by sworn affidavit, that subtenants exist at the Property,” and in fact, “[t]his claim is [] belied by the express terms of the Loan Documents” (NYSCEF Doc No 60 [citing, *inter alia*, NYSCEF Doc No 43 § 7[o] [“None of the units in the building [] are used by any individual . . . as a primary residence”]). In reply, plaintiffs claim that sub-tenants occupy units 1A, 1B, 2A, 2B, 3A and 5A, and the basement and backyard (NYSCEF Doc No 73); submit a document entitled “7 East 88th Street Corp. collection status for period ended 12/31/2024” which reflects charges and balances for certain units (NYSCEF Doc No 65); and submit affirmations from two individuals who state that they reside in the building and are “familiar with nine other individuals who reside in the Building, all of whom are, upon information and belief, subleasing from 34715, LLC” (NYSCEF Doc Nos 71, 72).

Plaintiffs do not contend that defendants were on notice of the alleged sub-tenants, and as defendants note, plaintiffs made several representations to the contrary. Therefore, under the circumstances, it was commercially reasonable to market the units, basement, and backyard as

unoccupied as of May 20, 2025. In the event of a future sale, however, plaintiffs would have to produce further evidence to substantiate their claim that certain units are occupied (such as copies of the lease agreements and rent ledgers)² so that defendants may accurately represent the occupancy status of the building.

ii. *Entitlement to the Connecticut Property*

Plaintiffs further argue that the sale is not commercially reasonable because defendants “have not established a legal entitlement to sell some of the Pledged Collateral and indeed at least some of the collateral was fraudulently obtained” (NYSCEF Doc No 16). Specifically, they allege that “Krauss was unaware of [the] transaction” conveying the Connecticut property to NYC157 LLC (NYC157), “the signature that appears on the quitclaim deed is not his,” and “Krauss does not even know what NYC15, LLC is” (*id.*). Defendants assert that plaintiffs’ “claim of ‘foul play’” is without merit because the conveyance of the Connecticut property “is consistent with the Loan Documents,” and “[t]he presumption of authenticity of Krauss’ [notarized] signature on the [] Quitclaim Deed cannot be rebutted by mere speculation” (NYSCEF Doc No 60).

While Krauss claims he does not know what NYC157 is and that he never conveyed the Connecticut property to it, plaintiffs’ own motion seeks to “enjoin[] and restrain[] [defendants] from selling, transferring, or otherwise alienating, encumbering, or interfering with . . . Krauss’ membership interests in [] NYC157, LLC; and [] NYC157, LLC’s ownership interest in” the Connecticut property (NYSCEF Doc No 4). In their reply, plaintiffs do not address this

² The “collection status” document submitted by plaintiffs (NYSCEF Doc No 65) is insufficient for these purposes because, *inter alia*, it shows only the “period ended 12/31/2024” rather than ongoing monthly payments; while Julian Darwall and Margaret Becker affirm that they are sub-tenants (NYSCEF Doc Nos 71, 72), their names are not included in the document; while they also affirm that there are nine sub-tenants total (*id.*), the record only includes the names of two individuals (Anthony Mazzei and Norma Nussbaum) other than plaintiffs; and the charges and balances are not explained (NYSCEF Doc No 65 [e.g., the unexplained line item of “special as”]).

contradiction, or defendants' opposing arguments regarding this issue (NYSCEF Doc No 73). Therefore, plaintiffs' claim that the Connecticut property was fraudulently acquired is deemed abandoned.

iii. Maximizing Sale Price, Unit 3B

Plaintiff also argues that the unique physical structure of the building makes it difficult to maximize the sale price “because some of the shares up for auction are appurtenant to units that are physically contiguous with units that are not up for auction” (NYSCEF Doc No 16). Defendants do “not dispute[] that selling all shares of the Cooperative would likely fetch a higher sale price than the sale of shares associated with only [certain units] and the Roof,” but note that this “gloss[es] over the reality [that the cooperative lender] cannot sell what was not pledged – specifically the cooperative shares associated with Unit 3B” (NYSCEF Doc No 60).

The parties dispute who owns the shares associated with unit 3B. Plaintiffs allege that the assignment-in-lieu agreement “purported to transfer Unit 3B to 88 Street Servicing. Yet, inexplicably, 15 Share Holder[,] [a] single-purpose entity wholly owned by Turret Equities³, recorded on ACRIS its payment of the real property transfer[] dated February 10, 2025, and identif[ied] itself as the buyer of Unit 3B and Krauss as the seller. This recording [was] fundamentally flawed and, thus incapable of validly transferring Unit 3B to 15 Share Holder” (NYSCEF Doc No 78 ¶ 51). Thus, plaintiffs contend that Krauss is still the valid owner of both the shares and property of unit 3B. Plaintiffs also assert that while “Unit 3B is not part of the Pledged Collateral[, it] is physically contiguous with Units 4A, 4B, and 5B” and therefore, in order for a purchaser to make use of those units, they would have to physically partition them from unit 3B (NYSCEF Doc No 16). In opposition, defendants assert that “the cooperative

³ Plaintiffs assert that Turret Equities also “controls” NYCTH (NYSCEF Doc No 16).

shares associated with Unit 3B were transferred to [] 15 Share Holder LLC pursuant to the Assignment in Lieu [of Foreclosure] Agreement” and thus belong to 15 Share Holder (NYSCEF Doc No 60).⁴

The assignment in lieu of foreclosure agreement provides for the transfer of Krauss’s shares allocated to apartment 3B to 88 Street or its designee, which defendants identify as 15 Share Holder (NYSCEF Doc No 47, Recitals § Q [providing for “the transfer and conveyance of the fifteen (15) shares of [the cooperative] owned by [Krauss] which are allocated to apartment 3B at the Real Property [] to Lender [88 Street] or [its] designee”], § 2[a] [“Assignment shall convey the Subject Shares to Lender’s designee named therein[,] and which Designee Lender is authorized to identify in the Assignment, without further action on the part of, or notice to, Individual Guarantor”]; NYSCEF Doc Nos 60, 80 [defendants stating that these shares were assigned to 15 Share Holder]). The property was sold by Krauss to 15 Share Holder on February 10, 2025 (NYSCEF Doc No 9). Krauss claims that he “did not knowingly transfer Unit 3B to that or any other entity on or about February 2025” but offers no evidentiary basis for his claim that the transfer was fraudulent (NYSCEF Doc No 5 ¶¶ 38-42 [merely asserting “[t]here would have been absolutely no reason for” him to make this transfer]). Based on these submissions, 15 Share Holder owns both the property and shares appurtenant to unit 3B. Notably, these shares were *not* assigned in the agreement entered into on July 3, 2024 whereby 88 Street assigned the consolidated loan (which excluded the shares in unit 3B) to NYCTH (NYSCEF Doc No 51).

Plaintiffs allege that, because the value of the whole of the cooperative is greater than the sum of its parts, defendants purposefully separated the shares appurtenant to unit 3B and those

⁴ In reply, plaintiffs state that 15 Share Holder, NYCTH, and Townhouse Fee (the Turret defendants) “rely on the purported transfer of the shares appurtenant to Unit 3B from 88 Street [] to NYCTH” and that defendants incorrectly assert that “Townhouse Fee now owns Unit 3B” but it does not appear that defendants claim NYCTH or Townhouse Fee is the owner of the shares (NYSCEF Doc No 73).

appurtenant to the remainder of the cooperative so that subsidiaries (15 Share Holder and NYCTH) of the same parent company (Turret Equities) could purchase the “parts” at a lower price point and later combine them to ultimately acquire sole ownership of all of the cooperative shares (NYSCEF Doc No 78 ¶ 73 [NYCTH “failed to include Unit 3B in the sale which, at this point, was purportedly [] held by 15 Share Holder, despite that company’s common ownership with NYCTH.”]). Plaintiffs allege that this is a bad faith ploy specifically designed to avoid obtaining the best price for the property (*id.* [“The Turret Defendants structured the proposed sale in this manner because the foreclosure sale was a sham; upon information and belief, their intention was to purchase the shares for themselves at a below-market value.”]). However, plaintiffs do not seek to pierce the corporate veil, nor do they provide a sufficient basis to treat these distinct entities as alter egos (NYSCEF Doc No 16 [merely asserting that 15 Share Holder is “wholly owned by Turret Equities, the same company which controls NYCTH”]; *see also* NYSCEF Doc 85 [in plaintiffs’ response to defendants’ sur-reply, they acknowledge that “neither common management nor common ownership is grounds for finding distinct entities to be alter egos of each other and, thereby, to overlook their separate legal personhoods”]). Therefore, plaintiffs fail to demonstrate that it was not commercially reasonable for NYCTH to sell only the shares pledged to it.⁵

Accordingly, the proposed sale was commercially reasonable.

Disputed Shares

In their reply, plaintiffs raise an additional argument that the amended pledge agreement—by which 34715 purported to pledge the shares appurtenant to units 4A, 4B, and 5B, and the roof (the disputed shares), formerly held by Krauss, to 88 Street (NYSCEF Doc No 44)—is

⁵ Plaintiffs’ argument is contradictory in that plaintiffs assert that Krauss is still the owner of the unit 3B shares but also fault NYCTH for failing to sell all the cooperative shares (including for unit 3B) to get the best possible price.

invalid because Krauss never validly transferred those shares to 34715. Specifically, plaintiffs assert that the share certificates for the disputed shares were never “surrendered up and cancelled” as required by the cooperative’s bylaws; no instrument of assignment was executed, “much less one complying with Article II of the Proprietary Lease”; and there was no “written consent to the transfer, authorized by the managing agent, delivered to the Cooperative” in compliance with the same provision of the lease (NYSCEF Doc No 73).

However, as defendants note, “Plaintiffs repeatedly ratified Defendants’ security interest [and] acknowledged the validity of the collateral” (NYSCEF Doc No 80 [“Krauss executed [] documents which contain waivers, acknowledgements and unequivocal representations that [34715] possessed the authority to[] pledge the collateral to Defendants”]; *Ray v Ray*, 61 AD3d 442, 447 [1st Dept 2009] [“A party, by [his] own acts or words, may ratify what would otherwise be a questionable contract”]). Moreover, while the transfer of shares may not have fully complied with the bylaws and lease, it was entered into between Krauss, individually, and Krauss, as the sole member and manager of 34715; plaintiffs cannot avoid the consequences of the amended pledge agreement based on their own failure to “surrender[] up and cancel[]” the share certificates and execute the instrument of assignment. Additionally, Krauss is the sole shareholder and president of the cooperative, obviating the need for “written consent to the transfer authorized by the managing agent, delivered to the Cooperative.”

Accordingly, the disputed shares were validly pledged to 88 Street.

CONCLUSION

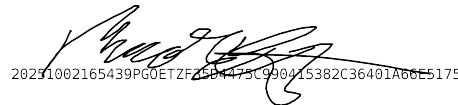
Based on the foregoing, it is

ORDERED that plaintiffs’ motion is granted only to the extent that the sale of the collateral is stayed for defendants to serve a notice of sale that includes a statement of plaintiffs’

right to an accounting in compliance with UCC § 9-613(a)(4), and that includes a description of any and all subtenants who may be occupying the building in compliance UCC § 9-610(b), but only in the event that plaintiffs provide the information as to subtenancies as required below; and it is further

ORDERED that within 30 days of entry of this order, plaintiffs shall provide to defendants proof of any and all sub-tenants occupying the building such proof includes but is not limited to subleases; and upon receipt of same or an affirmation from plaintiffs indicating that there are no subtenants occupying the building, defendants are permitted to re-notice the sale; and it is further

ORDERED that the parties are directed to attend a preliminary conference on December 4, 2025 at 9:30 a.m.


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<u>10/2/2025</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	